

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2007-0156, State of New Hampshire v. Ian Maranda, the court on February 20, 2008, issued the following order:**

The defendant, Ian Maranda, appeals his convictions for attempted murder, first degree assault, felon in possession of a firearm and falsifying physical evidence. He argues that the trial court erred in: (1) failing to dismiss the charge of falsifying physical evidence for lack of sufficient evidence; (2) overruling his objection to testimonial hearsay; (3) failing to dismiss the charge of first degree assault involving victim White for lack of sufficient evidence; and (4) imposing separate sentences for his convictions for attempted murder and first degree assault. The State concedes that the evidence was insufficient to support a first degree assault conviction with respect to victim White; we reverse that conviction. The State also concedes that the trial court's imposition of consecutive sentences on the attempted murder conviction and first degree assault conviction with respect to Addo-Gyang was error; we vacate the first degree assault conviction. We therefore address only whether the evidence was sufficient to support a conviction for falsifying physical evidence and whether the trial court erred in admitting certain statements of the defendant's girlfriend. We affirm in part, reverse in part, vacate in part and remand.

To prevail upon a challenge to the sufficiency of the evidence, the defendant bears the burden of proving that no rational trier of fact, viewing the evidence in the light most favorable to the State, could have found guilt beyond a reasonable doubt. State v. Drake, 155 N.H. 169, 173 (2007). In reviewing the evidence, we examine each evidentiary item in the context of all the evidence, not in isolation. *Id.* The defendant asks that we review his conviction for falsifying physical evidence under our plain error standard. *See Sup. Ct. R.* 16-A; State v. Matey, 153 N.H. 263, 266 (2006) (explaining principles of application).

The charges in this case resulted after the defendant and another person fired shots into a vehicle, seriously wounding two of its occupants. The falsifying physical evidence indictment, *see* RSA 641:6, I (2007), charged the defendant with "believing that an investigation . . . was about to be instituted, he purposely concealed a Firearm by giving it to Tay-Lynn Woods in order to impair its availability in such investigation."

The defendant does not contest that he believed an official investigation was about to be instituted and that he had a purpose to impair the availability of the firearm to investigators; rather, he argues that the State failed to establish that he altered or concealed the firearm. According to the defendant, his actions in wrapping one of the guns in a shirt after the shooting and giving it to another person at most established an attempt to abandon the gun rather than to conceal it.

He argues that our decision in In re Juvenile 2003-187, 151 N.H. 14 (2004), in which we held that the act of a juvenile throwing a cigarette package on the floor in the direction of a police officer did not evidence a purpose to conceal, is controlling in this case. In Juvenile 2003-187, we noted that the juvenile did not prevent the police officer from recognizing and retrieving or discovering the contents of the package and that he did not place the package out of the officer's sight or shield it from his vision in any manner. *Id.* at 17. "The pack was not hidden, buried or secreted from [the police officer's] vision or attention." *Id.* The police officer saw the juvenile throw the package on the floor, saw it come to rest and was promptly able to retrieve it. *Id.*

The testimony in this case supports a different result; it included that: (1) the other assailant in the shooting had thrown the gun he used under a car; (2) when the defendant's friend told him that it was stupid to leave it there, he asked her to get it; and (3) when she refused, he retrieved it and took it to another friend's house where he wrapped it in a shirt and gave it to that friend, who took it from the car and returned without it. Construed in the light most favorable to the State, this evidence and its reasonable inferences excludes all rational conclusions other than that the defendant intended to conceal the gun from the police. See State v. Flynn, 151 N.H. 378, 383 (2004) (proper analysis not whether every possible conclusion excluded but rather whether other rational conclusions based upon evidence have been excluded).

The defendant also contends that the trial court erred in admitting testimonial hearsay. Whether a statement is testimonial is a legal conclusion that is determined by an objective analysis of the primary purpose of the interrogation that produced the disputed statement. State v. Ayer, 154 N.H. 500, 508 (2006). Although we defer to a trial court's determination of historical facts, we review *de novo* its legal conclusion as to whether a statement is nontestimonial. *Id.* We will assume that the trial court erred in admitting the cited testimony. Based upon the record, we conclude that any error was harmless. See State v. Wall, 154 N.H. 237, 245 (2006) (error harmless if State establishes beyond reasonable doubt that alternative evidence of defendant's guilt is of overwhelming nature, quantity or weight, and if inadmissible evidence is merely cumulative or inconsequential in relation to strength of State's evidence of guilt).

The testimony challenged by the defendant indicated that after the shooting the defendant's girlfriend made false statements to the police when asked his whereabouts and when she had last seen him. The defendant argues that this testimony provided strong evidence of his consciousness of guilt.

Prior to that testimony, however, the jury had heard from another witness that: (1) the defendant had run from the scene of the crime; (2) he had picked up a gun that the other shooter had dropped after using it; and (3) he took the gun from the scene, wrapped it in a shirt and gave it to another person who removed it from the car. The jury also heard testimony that: (1) several hours after the shooting, the defendant was located in northern New Hampshire at the home of a relative of his girlfriend; (2) his girlfriend's car was parked in the driveway with a license plate registered to another car; and (3) the defendant who had long hair in a ponytail at the time of the shooting had very short hair when found in northern New Hampshire. Given this evidence, we conclude that, to the extent that the admission of any part of the challenged testimony may have been error, it was harmless.

~~Affirmed in part; reversed in part;  
vacated in part; and remanded.~~

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**